No. 64.

Supreme Court of the United States

October Term, 1922.

THOMAS F. E. RYAN,

Appellant,

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

APPELLANT'S REPLY BRIEF.

WILLIAM E. RUSSELL,
LOUIS T. MICHENER,
PERRY G. MICHENER,
Attorneys for Appellant.

THE REPORTER CO., WALTON, N. Y.
New York Office: 220 Broadway, Room 514. 'Phone 6478 Barclay.
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LIST OF STATUTES.

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THOMAS F. E. RYAN, Appellant, vs. THE UNITED STATES.	Appeal from the Court of Claims.

REPLY BRIEF FOR THE APPELLANT.

I.

The brief of the appellee in this case, perhaps unintentionally, gives the impression that the claim is advanced by the appellant that the statutory salary of inspectors of customs throughout the United States is $5 per diem, and that judgment for appellant herein will result in an award to all of the inspectors in all the ports. Such is not the fact or the contention, for the right of the appellant to succeed is based upon *special statutes applying to the Port of New York alone.* All of the salary legislation affecting inspectors, with the exception of the Port of New York, has been general in its scope. In the appendix hereto will be

found all of this legislation from 1789 to 1909, inclusive. It will be noted that the Acts of 1902, 1906 and 1907 affect inspectors at the Port of New York alone. It is upon these statutes, as construed by this court in the case of *Cochnower vs. United States,* 248 U. S. 405; 249 U. S. 588, that appellant's case rests. As stated in appellant's original brief, there are some eighty-five pending cases controlled by the decision of this case. All of them involve amounts smaller than the amount claimed by this appellant.

II.

(a) Counsel for the appellee (brief, at page 4) state:

> "If a minimum salary of $5 was provided by law for inspectors, Class 2, at the time of appellant's appointment, then it must be conceded that he is entitled to that compensation." Cases cited.

The question is not accurately stated. The real question for determination is whether or not there was a statutory salary of $5 per diem in the Port of New York at the time of appellant's appointment.

(b) The Government counsel concede that, if there was such a statutory salary, appellant is entitled to that compensation under the doctrine of *United States vs. Andrews,* 240 U. S. 90; *Glavey vs. United States,* 182 U. S. 595. With the concession above set forth, and having in mind the decision of this Court in the *Glavey* case, *supra,* it is unnecessary to discuss appellee's argument as advanced in Point II, pages 23 to 29, concerning estoppel and waiver. Appellant's right to compensation is based upon the statute and not upon contract. The doctrine of estoppel cannot be invoked in salary claims based on a statute, for the excellent

reason that the control of salaries is vested in Congress, except when delegated, and when Congress has fixed a salary the appointing power may not set aside the will of the legislative body by requiring the appointee to accept something less than the statutory sum.

Counsel for the Government lay great stress upon the Deficiency Appropriation Act of March 3rd, 1881 (see pages 6 and 7 of their brief). This same statute was urged upon this Court in the *Cochnower* case (see page 6 of the brief for the United States in that case). Again, in the *Cochnower* case, when the United States petitioned for a rehearing, this Act of 1881 was vigorously urged upon this Court as being a justification for the reduction of the claimant to less than $5 per diem (see pages 8, 9, 10, 11 and 12 of the petition of the United States for a rehearing in that case). But this Court did not so decide. Furthermore, this Statute of 1881 was discussed fully by counsel for Cochnower in the original brief (pages 17 and 18 of appellant's original brief).

The Government's argument in the instant case as to the effect of the Act of 1881 overlooks entirely the fact that the *later special* statutes of 1902, 1906 and 1907, applying to the Port of New York alone, limited and restricted the power of the Secretary of the Treasury with respect to the salary of the inspectors in that port. Such argument further overlooks the fact that the *Cochnower* case is decisive on that point. This Court no doubt had in mind that the Act of 1902 was entitled:

> "An Act Regulating the Duties and *Fixing the Compensation of the Customs Inspectors at the Port of New York.*" (See appendix.) (Italics ours.)

It is not contended on behalf of the appellant that because all the other inspectors at New York were

receiving $5 per diem he was thereby entitled to the same compensation. He was entitled to the same compensation because the statute so provided, *and for this reason alone.*

(c) The Act of 1909 was considered and construed by this Court in its decision of the *Cochnower* case. This Court decided in that case that the power given by Section 2 of that act to the Secretary of the Treasury was to *increase and fix* the compensation of inspectors of customs not to exceed the sum of $6 per diem. This Court further decided that the power of classification, as contended for by the Government, could be accommodated between the fixed salary of $5 per diem and the authorized maximum of $6 per diem. The appellant's contentions in the instant case are in harmony with and are based upon the decision in the *Cochnower* case.

(d) On page 10 of appellee's brief some stress is laid upon the fact that Cochnower was appointed at $5 per diem in 1908 and was reduced to $4 per diem in 1910, after passage of the Act of 1909, while Ryan was originally appointed inspector at $4 per diem in 1910. Counsel for appellee concludes that this Court merely held in the *Cochnower* case that the Secretary, having appointed Cochnower at $5, could not thereafter change his compensation. As stated in this appellant's original brief (pages 17 to 19), Cochnower's right to recover rested solely upon the ground that he held an office to which the law affixed a salary of $5 per diem. If the law authorized a salary less than $5 per diem in the Port of New York, Cochnower could have been reduced to that lower salary, because the courts will not interfere with the exercise of the discretionary power over its personnel vested by law in the executive departments. *Keim vs. United*

States, 177 U. S. 290. If the law did not authorize a salary lower than $5 per diem in the Port of New York, the appellant in the instant case is entitled to recover, and it is submitted that this question has been foreclosed by the *Cochnower* case.

(e) On page 12 of appellee's brief, it is contended that if Ryan's claim should be allowed, the same theory would be advanced by other employees of the Government service. This argument is again based upon the assumption that Ryan's claim to increased compensation is predicated upon payment of said increased compensation to other employees. His claim is based on a statute and, if there be other employees who are not receiving the salary that Congress has provided for them, it is clear that they would be entitled to recover the lawful salary under the decisions of this court.

III.

On page 24 of appellee's brief, it is argued that the long continued contemporaneous construction of a statute by the department charged with its execution will be given great weight and unless obviously erroneous will not be disturbed by the courts. This is unquestionably the rule when considering ambiguous statutes. In fact, this argument was urged upon this Court by counsel for Cochnower (see pages 35 and 36 of appellant's brief in the *Cochnower* case). It will be observed from an examination of the statutes affecting inspectors' salaries, set forth in the appendix hereto, that permissive language was used in all of the statutes except R. S., Sec. 2733, and that an authorized maximum was named in each of them. As it appeared in the *Cochnower* case, the Secretary of the Treasury had always construed such statutes as intending an in-

crease to the maximum amount, and had governed himself accordingly. The findings in the instant case (finding IV, R. 7), show that all of the inspectors in the Port of New York were increased to $4 per diem pursuant to the authority conferred by the permissive Act of June 6, 1864, and to $5 per diem (finding VI, R. 9), pursuant to the Act of December 16, 1902. It appears further, in the finding last mentioned, that all of the inspectors at the Port of New York continued to receive $5 per diem until the appointment of the appellant herein on April 16, 1910. It thus appears that from 1789 to 1910, the Secretary of the Treasury had never construed the salary statutes as authorizing any classification in any port, and that he had always construed these permissive statutes as intending an increase to the maximum therein named. In the *Cochnower* case, the claim was advanced by the Government that the right to "*classify*" at $4 per diem at the Port of New York rested upon the provisions of the Act of March 4, 1909. This contention was brushed aside by this Court. Therefore, if great weight is to be given to the long continued contemporaneous construction of all of these related statutes by the department charged with the execution thereof, at New York was fixed in 1902 at $5 per diem, when all of them were increased to that amount and without reference to the later Acts of 1906 and 1907. However, these Acts of 1906 and 1907 make conclusive that which might have been doubtful prior thereto.

In considering these salary statutes it may be well to refer briefly to the statutory rule of legislative interpretation of previous statutes in *pari materia*. The rule was well stated in the early case of *Alexander vs. Mayor*, 5 Cranch 1. The opinion in that case was

written by Mr. Chief Justice Marshall. At pages 7 and 8 the rule was stated in the following language:

> "Without deciding this question, as depending merely on the original law, it is to be observed that acts in *pari materia* are to be construed together as forming one act. If in a subsequent clause of the same act provisions are introduced which show the sense in which the Legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases. Consequently, if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated, requiring that the subsequent should be incorporated into the foregoing act, is a direction to courts in expounding the provisions of the law."

Applying this rule to the Acts of 1906 and 1907, it would seem that Congress declared, in unequivocal language, that the Act of 1902, which was entitled, as heretofore stated:

> "An Act Regulating the Duties and Fixing the Compensation of the Customs Inspectors at the Port of New York."

intended an increase of the salary to $5 per diem for all inspectors of customs at the Port of New York. We are reinforced in this belief by the fact that Congress appropriated sufficient moneys for each of the years succeeding 1902 to carry into effect the act passed that year.

IV.

(a) On page 25 of appellee's brief, there is a quotation from *MacMath vs. United States*, 248 U. S. 151. MacMath was a clerk to the Collector of Customs, which means that he was an employee only and not an

officer with a fixed statutory compensation. While such clerk, he was appointed as "Clerk and Acting United States Weigher." A United States weigher in *an officer*, as this Court held. The action was for the statutory salary of such officer, $2,500 per annum, and this Court held that the department had the right to so designate the duties of a clerk and make him perform the duties of weigher, and, further, that there was no intention to appoint MacMath as a weigher, and it therefore denied his claim for the statutory salary. In the instant case there was no question about the appointment of Ryan to the office of inspector of customs. In the *MacMath* case, in the opening paragraph of the opinion, the Court said:

> "When an office with a fixed salary has been created by statute, and a person duly appointed to it has qualified and entered upon the discharge of his duties, he is entitled, during his incumbency, to be paid the salary prescribed by statute; and effect will not be given to any attempt to deprive him of the right thereto, whether it be by unauthorized agreement, by condition, or otherwise. *United States vs. Andrews*, 240 U. S. 90; *Glavey vs. United States*, 182 U. S. 595."

The foregoing language takes out of the present case all features of the law of estoppel, whether they be by acquiescence, agreement, waiver, or what not. It would, therefore, seem clear that the *MacMath* case does not support the appellee's contention.

(b) Of the cases cited on page 28 of appellee's brief, it is to be noted that all of these actions were based on contracts, express or implied, and they are therefore not controlling in the case at bar, which is predicated solely on a statutory right to a salary. The distinction is as plain as a pike-staff.

V.

(a) On page 21 of appellee's brief, it is urged upon the Court:

> "Even if it should be held by this Court that appellant is entitled to the difference between $4 per day, which he received, and the $5 per day which he claims, the additional compensation cannot be allowed him subsequent to June 30, 1913, when the reorganization of the customs service authorized by the Act of 1912, became effective, as that act impliedly repealed all former acts." * * *

We have discussed the effect of the Act of August 24, 1912, and the executive order of March 3, 1913, issued pursuant thereto, somewhat briefly in our original brief (pp. 41-42). In view of the fact that the appellee urges that this Court decided that the executive order of 1913, limited Cochnower's recovery to the period ending June 30, 1913, it is deemed necessary to discuss said executive order more fully, for counsel for the appellant do not find anything in the *Cochnower* decision that construes the executive order in the manner claimed. It is true that Cochnower's claim was limited to the period ending June 30, 1913, but the opinion does not disclose the reason therefor.

(b) The executive order of March 3, 1913, was issued pursuant to the Act of August 24, 1912, C. 355, 37 Stats. 434. The Act of August 24, 1912, begins as follows:

> "The President is authorized to reorganize the customs service and cause *estimates* to be submitted therefor on account of the fiscal year, 1914, bringing the total cost of said service for said fiscal year within a sum not exceeding $10,150,000, etc." (Italics ours.)

The President, pursuant to such authorization, submitted both the plan of reorganization and the estimate for the fiscal year, 1914 (see U. S. Compiled Stats. 1913, Section 5327).

It will be noted that he was to reorganize the customs service and to *cause estimates to be submitted* for the fiscal year, 1914. It is clear that the President was to do all this by and through the Secretary of the Treasury and the officials of that department, they being skilled in all things relating to the subject, and it is equally clear that he was to cause estimates to be submitted for the fiscal year, 1914 *only*. The estimates *were to be for one fiscal year and no more*, while the Act declared that the reorganization, when communicated, should be the "*permanent organization of the customs service*" until otherwise provided by Congress. In other words, the reorganization was to stand "*until otherwise provided by Congress*," while the estimate was advisory and temporary, nothing more. As the Act directed that the "reorganization shall be communicated to Congress," it was easy and natural that the "estimate," should be sent with it and that is why it was "attached," to the order. It must be remembered that the Act limited the expense of collecting the revenue from customs to $10,150,000, while the estimate called for a sum greatly in excess of this amount.

(c) Finding VIII, R. 11, shows clearly that the Treasury Department, has at all times since the said executive order, became effective, construed the estimate annexed to the reorganization plan as an estimate only, and in no sense a restriction, limitation or denial of the right of the secretary to increase or diminish the numbers of the various positions therein provided for, or to increase or decrease, by promotion or demotion, the compensation within statutory limita-

tions of any of the officers therein mentioned. It is apparent, therefore, that the department has never regarded that the estimate annexed to the executive order, and which set forth that there were certain inspectors employed at New York at $4 per diem, was controlling upon the secretary in any way. In fact, the language at the conclusion of the executive order shows quite clearly that the estimate was intended to be an estimate only. "Attached hereto is a detailed estimate of the expenses of the customs service under the reorganization above provided." It was well understood by the department and by Congress that it would not be possible in the customs service to legislate definitely as to each and every position, and as to the salary to be paid to the incumbents thereof. Most of the *officers* in the customs service receive compensation regulated by statute, while the *clerks' and employees'* salaries are left to the discretion of the Secretary of the Treasury. Reference to the official registers of the employees of the Treasury Department will show that innumerable employees have been reduced in salary below the amounts named in the estimate annexed to the executive order, that numerous positions mentioned in said estimate have been abolished, and others created, and that salaries generally have been increased over and above the amount named in said estimate.

(d) Not only has the Secretary of the Treasury construed and dealt with the estimate as an estimate only, but Congress has dealt with the same in a similar manner. It will be remembered that the Act of August 24, 1912, *supra*, authorized the reorganization of the customs service so as to bring the cost within a sum not exceeding $10,150,000, for the fiscal year ending, 1914. The estimate annexed to the order contemplated appropriations of $10,381,766.01. As a matter

of fact, Congress appropriated for the fiscal year, ending 1914, $10,566,000, see

Act of June 23, 1913, Chapter 3, 38 Stats. 23 (Sundry Civil).
Act of July 29, 1914, C. 215, 38 Stats. 565 (Deficiency Act).

For the fiscal year, ending 1915, the sum of $10,515,000, was appropriated; see

Act of August 1, 1914, C. 223, 38 Stats. 623 (Sundry Civil).

For the fiscal year, 1916, the sum of $10,180,000, was appropriated; see

Act of March 3, 1915, C. 75, 38 Stats. 836 (Sundry Civil).

For the fiscal year, 1917, the sum of $10,097,500, was appropriated; see

Act of July 1, 1916, C. 209, 39 Stats. 84, 277, 278.

For the fiscal year, 1918, the sum of $10,255,000, was appropriated; see

Act of June 12, 1917, C. 27, 40 Stats. 120, and the
Act of March 28, 1918, C. 28, 40 Stats. 468.

For the fiscal year, ending 1919, the sum of $10,537,000, was appropriated; see

Act of July 1, 1918, C. 113, 40 Stats. 644.

For the fiscal year, ending 1920, the sum of $10,175,000, was appropriated; see

Act of July 19, 1919, C. 24, 41 Stats. 174 (Sundry Civil), and
Act of June 5, 1920, C. 253, 41 Stats. 1023 (Deficiency Act).

For the fiscal year, ending 1921, the sum of $11,457,000, was appropriated; see

> Act of June 5, 1920, C. 235, 41 Stats. 883 (Sundry Civil).

For the fiscal year, ending 1922, the sum of $11,435,000, was appropriated; see

> Act of March 4, 1921, C. 161, 41 Stats. 1376 (Sundry Civil).

It is clear, therefore, that Congress has always dealt with the said estimate as being an *estimate* only and has ratified, and confirmed the construction placed thereon by the Secretary of the Treasury, as it appears by the findings in this case. Congress has since appropriated both larger and smaller sums of money than the limitational amount specified in the Act of August 24, 1912. It has also accepted from the Secretary of the Treasury, in each year succeeding the fiscal year, 1914, estimates totally at variance with the estimate annexed to the executive order.

The Court below held in *Lynch's Administrator vs. the United States*, 31 Ct. Cls. 62, that such acceptance by Congress amounts to an adoption of the construction. In that case the question before the Court was the effect to be given to reports that had been made to Congress from time to time and which had been acted upon by that body. At the top of page 65, the Court says:

> "These reports have been acted upon by Congress, thereby adopting the construction of the statute circumscribing the loyalty required to be found to the person furnishing the supplies or the person from whom they were taken."

In the case at bar, the only way that Congress could act upon the reports or estimates of the Secretary of

the Treasury was by making appropriations. Congress has acted upon these various reports or estimates, and in such manner as to leave no doubt but that it adopted and acquiesced in the stand taken by the secretary in treating the estimate annexed to the executive order as being an estimate only and in no sense a part of said executive order and in nowise fixing the permanent organization of the custom service.

(e) The acts and constructions of the secretary were upon the theory that the "estimate," was not, and was not intended to be a part of the executive order, and his annual reports to Congress showed that same was not held and regarded by the department as a part of that order. Congress found no fault and did not challenge the department's acts or views or constructions in any manner, but acquiesced in them. It would pass the bounds of possibility to believe that Congress was not well informed as to the construction placed upon the "estimate," by the department.

> "It is presumed that the Legislature is familiar with the law and the construction placed upon it."
>
> *Sutherland Statutory Construction*, Volume 2, page 499.
> *Board vs. Holliday*, 150 Ind. 216.

(f) The Act of August 24, 1912, authorized the President to reorganize the customs service and cause estimates to be submitted, "Such reorganization to be communicated to Congress," etc. The authority was broad and comprehensive, and the reorganization was to be the "permanent organization of the customs service" till otherwise provided by Congress. The whole subject of this reorganization of the customs service was put in the power of the President, and the reorganization made by him was to continue in force "until otherwise provided by Congress."

Inevitably, the application and operation of the permanent reorganization was a subject to be dealt with day by day in administering the customs service, and manifestly that had to be done by the Secretary of the Treasury.

(g) The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Hence, the acts and decisions set forth in Finding VIII, R. 11, were, in legal contemplation, the acts of the President himself. This is the doctrine of *Wilcox vs. Jackson*, 13 Peters 498, 513; *United States vs. Farden*, 99 U. S. 10, 19; *Wolsey vs. Chapman*, 101 U. S. 755, 769, 770 and many other cases.

In the case last cited, page 770, it was held that

> "An order sent out from the appropriate executive department in the regular course of business is the legal equivalent of the President's own order to the same effect."

It seems quite clear that the Secretary of the Treasury, in dealing with the problem of reorganizing the

customs service, and in preparing the executive order issued under date of March 3, 1913, has acted in accordance with the intent of Congress and entirely in a common sense way. The desire of Congress, as manifested in the act was to consolidate the great number of customs collection districts into a fewer number in order that more efficient administration could be obtained. There were over a hundred customs collection districts at that time, and the expense of maintaining some of these districts was out of all proportion to the revenue derived therefrom. In fact, in many of these districts thousands of dollars were expended in office rent, salaries, etc., to collect a few dollars of revenue. With this thing in mind, the Secretary of the Treasury, by means of the executive order, arranged to abolish certain collection districts, ports and sub-ports, and consolidate same into other collection districts, ports and sub-ports. In order to do this effectively and to provide for better administration, he extended the provisions of the "Immediate Transportation Act"; he abolished all fees theretofore paid to collectors of customs; he provided principal offices as headquarters for the respective new districts created, some forty-nine in number; he empowered surveyors to act where there were no collectors; he abolished the offices of surveyors of customs except at certain large ports; he appointed deputy collectors at various ports of entry; he provided for blank forms of various kinds to be used in connection with the importation of merchandise and delivery thereof from customs' custody; he continued in the classified service on a waiting list various officers whose positions were abolished, and he provided for the usual protests theretofore authorized by law. He also

fixed the salaries of the various *collectors of customs* in the forty-nine new districts created.

He did not, in anywise, attempt to fix in the executive order *any salaries other than those of collectors.* It is significant that the order provides only for the fixing of collectors' salaries and does not refer to, in any way, the salaries of other officers and employees of the customs. Most of these subordinate officers' and employees' salaries are subject to change by the secretary at will, but some of them are fixed by law and always have been.

With the foregoing in mind, the conclusion is irresistible that the proper interpretation and treatment of the executive order of 1913 is that the order is valid in all respects, and that the provisions thereof are in full force and effect at the present time, and have been in full force and effect since July 1, 1913, but that the matters dealt with in the estimate annexed thereto were treated and are to be treated as items subject to change at the discretion of the secretary except where he may be limited by law to the contrary. It follows, then, that the executive order does not limit the appellant's claim to three years.

We submit that the judgment of the Court of Claims should be reversed and that the appellant should have judgment for the amount prayed for in his petition, namely, $3,465.00.

Respectfully submitted,

WM. E. RUSSELL,
LOUIS T. MICHENER,
PERRY G. MICHENER,
Attorneys for Appellant.

APPENDIX.

For the purpose of placing before the court the complete legislation affecting the salaries of inspectors of customs, appellant submits herewith all of such statutes in full in the order of enactment.

Act of July 31, 1789, C. 5, Section 29 (1 Stats. 45) entitled:

> "An Act Relative to the *Compensation* and Duties of Certain Officers Employed in the Collection of Impost and Tonnage. (In part as follows):
>
> "To each inspector there shall be allowed for every day he shall be actually employed in aid of the customs, a sum *not exceeding* one dollar and twenty-five cents, etc." (Italics ours.)

Act of March 3, 1797, C. 9, Section 3 (1 Stats. 503) entitled:

> "An Act to Regulate the Collection of the Duties Imposed by Law on the Tonnage of Ships or Vessels and on Goods, Wares and Merchandise Imported into the United States. In part as follows:
>
> "That from and after the last day of March, in the present year, *in lieu of the sum heretofore established by law*, there shall be paid to each inspector, for every day he shall be employed in aid of the Customs, a sum *not exceeding* two dollars; etc." (Italics ours.)

Act of March 2, 1799, C. 23, Section 2 (1 Stats. 707) entitled:

> "An Act to *Establish* the Compensation of the Officers Employed in the Collection of the Duties on Impost and Tonnage, and for other Purposes. (Italics ours.) In part as follows:
>
> "To each inspector there shall be allowed for every day he shall be actually employed in aid

of the customs, a sum *not exceeding* two dollars, etc." (Italics ours.)

Act of April 26, 1816, C. 95, (3 Stats. 306) entitled:

"An Act to *Increase the Compensation Now Allowed by Law* to Inspectors, Measurers, Weighers and Gaugers Employed in the Collection of the Customs. (Italics ours.) In part as follows:

"That an addition *of fifty (50%) per cent upon the sums allowed as compensation* to inspectors, or persons acting as occasional inspectors, employed in aid of the customs, and to the measurers, weighers or gaugers, by the act, entitled * * * be, and the same is hereby allowed, etc." (Italics ours.)

Revised Statutes, Section 2733:

"Each inspector shall receive for every day he shall actually be employed in aid of the customs, three dollars; and for every other person that the collector may find it necessary and expedient to employ as occasional inspector, or in any other way in aid of the revenue, a like sum, while actually so employed, not exceeding three dollars for every day so employed."

Section 2733, Revised Statutes, is based upon the Acts of 1799 and 1816 (*supra*).

Act of April 29, 1864, C. 71 (13 Stats. 61) entitled:

"An Act *to Increase the Compensation of Inspectors of Customs in Certain Ports.* (Italics ours.)

"That the Secretary of the Treasury be, and he hereby is, authorized to increase the compensation of inspectors of customs in such ports as he *may think it advisable* so to do, and may designate, by adding to the present compensation of said officers a sum *not exceeding* one dollar per day. But the increase hereby authorized

shall not extend beyond July 1st, 1865." (Italics ours.)

Act of March 2, 1865, C. 73, Section 5 (13 Stats. 460) as follows:

> "And be it further enacted, that the provisions of the act approved April 29, 1864, *increasing the compensation of inspectors of customs in certain ports*, be extended to July 1st, 1866." (Italics ours.)

Act of July 23, 1866, C. 208, Section 9 (14 Stats. 208) as follows:

> "And be it further enacted, that the provisions of the Act approved April 29, 1864, *increasing the compensation of inspectors of customs in certain ports* is hereby continued in force." (Italics ours.)

Revised Statutes, Section 2737, as follows:

> "The Secretary of the Treasury may increase the compensation of inspectors of customs in *such ports as he may think it advisable* so to do, and may *designate*, by adding to the present compensation of such officers, a sum *not exceeding* one dollar per day." (Italics ours.)

This Section 2737 of the Revised Statutes is based upon the Acts of 1864 and 1866 (*supra*).

Act of March 3, 1881, C. 132 (21 Stats. 429), The Deficiencies Act. In part as follows:

> "For expenses of collecting the revenue from customs for 1878 and prior years, to pay claim numbered 81703, three dollars and fifty-four cents. Provided, that hereafter the Secretary of the Treasury *may appoint* inspectors of customs at a compensation less than three dollars per day, when, in his judgment, the public service will permit." (Italics ours.)

(d)

Act of December 16, 1902, C. 2 (32 Stats. 753) entitled:

> "An Act Regulating the Duties and *Fixing the Compensation* of the Customs Inspectors at the Port of New York." (Italics ours.)
>
> "That the Secretary of the Treasury is hereby authorized *to increase* the compensation of inspectors of customs at the Port of New York, as he *may think advisable and proper,* by adding to their *present* compensation a sum *not exceeding* one dollar per day, which additional compensation shall be for work now performed by them at unusual hours, for which no compensation is now allowed, and shall include work performed by said inspectors at night in examining passengers' baggage, and also as reimbursement for expenses incurred by them for meals and transportation while in the discharge or performance of their official duties." (Italics ours.)

Act of June 30, 1906, C. 3912 (34 Stats. 636), Deficiencies Appropriation Act. In part as follows:

> "To pay the inspectors of customs of the *Port of New York* the difference between the per diem salary of four dollars paid them during the months of October, November and December, 1905, and their *proper per diem salary for the same period (five dollars per diem) in accordance with the Act of Congress approved December 16, 1902,* thirty-one thousand dollars, or so much thereof as may be necessary." (Italics ours.)

Act of March 4, 1907, C. 2919 (34 Stats. 1373) Deficiencies Appropriation Act, in part as follows:

> "To enable the Secretary of the Treasury to pay certain inspectors of customs of the *Port of New York* the difference between the per diem salary of four dollars paid them during

the months of October, November and December, 1905, and their *proper per diem salary of five dollars* for the same period, nine hundred forty dollars." (Italics ours.)

Act of March 4, 1909, C. 314, Section 2 (35 Stats. 1065) entitled:

"An Act *Fixing* the Compensation of Certain Officials in the Customs Service and for other Purposes." (Italics ours.)

"That the Secretary of the Treasury be, and he is hereby authorized to *increase and fix* the compensation of inspectors of customs, *as he may think advisable, not to exceed* in any case the rate of six dollars per diem, and in all cases where the maximum compensation is paid no allowance shall be made for meals or other expenses incurred by inspectors when required to work at unusual hours." (Italics ours.)